

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

1

Parties

3. The Complainant is the Director of the Air, RCRA, and Toxics Division of the EPA, Region VII, as delegated from the Administrator of the EPA pursuant to EPA Delegation No. 8-9-A, dated March 20, 1985 and EPA Delegation No. R7-8-9-A, dated January 1, 1995.

4. The Respondent is NMF America, Inc., a foreign for profit company incorporated under the laws of the State of Delaware and authorized to conduct business in the State of Kansas.

Statutory and Regulatory Framework

5. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter "KAR 28-31").

6. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA shares enforcement authority with states with authorized programs and can initiate actions for violations of authorized state programs. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA must provide notice to a state with an authorized program prior to issuing an order. The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

Factual Background

7. Respondent's facility is located at 9313 East 39th Street North, Wichita, Kansas 67221. Respondent conducts metal finishing work on aircraft parts at the facility.

8. Respondent has not obtained a permit to operate any portion of the facility as a hazardous waste treatment, storage or disposal facility.

9. On August 13 and 14, 2002, the EPA conducted a RCRA inspection at Respondent's facility. A Notice of Violation was issued by EPA at the conclusion of that inspection to Respondent.

Findings of Violation

10. The allegations stated in paragraphs 5 through 9 above are herein incorporated.

COUNT 1

Failure to Conduct a Hazardous Waste Determination

11. Pursuant to 40 C.F.R. § 262.11 and KAR 28-31-4(b), a generator of "solid waste," must determine if the solid waste is a hazardous waste.

12. Respondent generates spent cloth rags from cleaning painting equipment. Respondent also generates sweepings from the operation of a paint booth. During the August 13 and 14, 2002, inspection, Respondent indicated to EPA that it had been disposing of the two waste streams as a solid waste in the general trash and that it had failed to conduct a hazardous waste determination on these two waste streams.

13. Subsequent to the August 13 and 14, 2002, inspection, Respondent indicated to EPA that it would be managing its spent cloth rags and paint booth floor sweepings as hazardous waste.

14. Respondent's failure to make a hazardous waste determination on the solid wastes, as described above, is a violation of 40 C.F.R. § 262.11 and KAR 28-31-4(b).

Offering Hazardous Waste to a Transporter or Disposal Facility That Does Not Have an EPA Identification Number

15. Pursuant to 40 C.F.R. § 262.12(c) and KAR 28-31-4(c)(2), a generator must not offer hazardous waste to a transporter or disposal facility that does not have an EPA identification number.

16. Prior to the August 13 and 14, 2002 inspection, Respondent was offering hazardous waste (its spent cloth rags generated from cleaning painting equipment and its paint booth sweepings) to a transporter and disposal facility that did not have an EPA Identification Number.

17. Respondent's failure to offer hazardous waste to a transporter and disposal facility that have an EPA identification number is a violation of 40 C.F.R. § 262.12(c) and KAR 28-31-4.

Count 2

Operating as a Treatment, Storage or Disposal Facility Without a RCRA Permit or RCRA Interim Status

18. The regulation at KAR 28-31-4(i) states that a generator who accumulates hazardous waste for more than ninety (90) days is an operator of a hazardous waste storage facility and is subject to 40 C.F.R. Parts 264, 265 and 270 permitting requirements unless he has been granted an extension to the ninety (90) days.

19. Respondent accumulated and stored 4,800 pounds of hazardous waste from October 2001 until July 2002, which is greater than ninety (90) days.

20. Respondent does not have a permit to operate any portion of the facility as a hazardous waste treatment, storage or disposal facility.

21. By storing hazardous waste on site for greater than ninety (90) days, Respondent was operating a hazardous waste treatment, storage or disposal facility without a permit.

22. Respondent's operation of a hazardous waste treatment, storage or disposal facility without a permit is a violation of Section 3005 of RCRA and KAR 28-31-4(i).

Failure to Meet Hazardous Waste Generator Requirements

23. At the time of the August 13 and 14, 2002 inspection, Respondent was not complying with the following conditions pursuant to 40 C.F.R. § 262.34 and KAR 28-31-4:

Failure to properly label a hazardous waste satellite accumulation container

24. The regulations at 40 C.F.R. § 262.34(c)(1) and KAR 28-31-4(j) require that while being accumulated on-site, each hazardous waste satellite accumulation container must be labeled with the words "Hazardous Waste" or with words identifying the contents of the container.

25. At the time of the August 13 and 14, 2002, inspection, Respondent was storing hazardous waste (filter press solids) in a satellite accumulation container (rolling cart) that was not labeled with the words "Hazardous Waste" or with words identifying the contents of the container.

26. Respondent's failure to label the hazardous waste satellite accumulation container is a violation of 40 C.F.R. § 262.34(c)(1) and KAR 28-31-4(j).

Failure to properly date and label hazardous waste storage containers

27. The regulations at 40 C.F.R. § 262.34(a)(2) and (3) and KAR 28-31-4(g)(2) and (3) require that hazardous waste containers be labeled with the words "Hazardous Waste" and the date of accumulation.

28. At the time of the August 13 and 14, 2002, inspection, Respondent was storing hazardous waste (paint related waste) in a container that was not labeled or dated. At the time of the August 13 and 14, 2002, inspection, Respondent was storing hazardous waste (paint booth filters) in three one-cubic yard containers that were not labeled or dated. At the time of the August 13 and 14, 2002, inspection, Respondent was storing hazardous waste (filter press solids) in a container (super sack) that was not labeled or dated.

29. Respondent's failure to label and date the hazardous waste storage containers is a violation of 40 C.F.R. § 262.34(a)(2) and (3) and KAR 28-31-4(g)(2) and (3).

*Failure to keep hazardous waste container storage containers closed,
except when adding or removing waste*

30. The regulations at 40 C.F.R. § 262.34(a)(1) and KAR 28-31-4(g)(1) require that hazardous waste containers be kept closed except when adding or removing waste.

31. At the time of the August 13 and 14, 2002, inspection, Respondent was storing hazardous waste (filter press solids) in a rolling cart and a super sack. Neither the rolling cart nor the super sack were closed and waste was not being added or removed.

32. Respondent's failure to keep hazardous waste storage containers closed is a violation of 40 C.F.R. § 262.34(a)(1) and KAR 28-31-4(g)(1).

Failure to retain copies of land disposal restriction notices

33. The regulations at 40 C.F.R. § 268.7(a)(5) and KAR 28-31-14 require that copies of land disposal restriction notices be kept on-site for each off-site shipment of hazardous waste.

34. At the time of the August 13 and 14, 2002, inspection, Respondent failed to have copies of land disposal restriction notices for the following three off-site shipments of hazardous waste: manifest number 44878, manifest number 20022, and manifest number MI8669079.

35. Respondent's failure to keep copies of land disposal restriction notices is a violation of 40 C.F.R. § 268.7(a)(5) and KAR 28-31-14.

Failure to have a complete RCRA Contingency Plan

36. The regulations at 40 C.F.R. Part 265 Subpart D and KAR 28-31-4(g)(4) require that generators of hazardous waste maintain a RCRA Contingency Plan on-site and that the RCRA Contingency Plan contain the following information:

- a. lists the names, home addresses, and telephone numbers (office and home) of all persons qualified to act as emergency coordinator and the order in which they assume responsibility to act as emergency coordinator,
- b. lists emergency equipment (such as spill control equipment, communications systems, fire extinguishers, alarm systems, decontamination equipment, etc.) at the facility, where such equipment would be found at the facility, and a brief description of the capabilities of all such emergency equipment,
- c. includes an evacuation plan that describes emergency meeting locations, the signals indicating different types of emergencies, and primary and secondary evacuation routes,
- d. describes where hazardous wastes are managed and the types of injuries that could result in the event of an accident or emergency,
- e. describes arrangements agreed to by the fire department, police department, hospital, and State and local emergency response teams, and
- f. describes actions facility personnel will take in response to a fire, explosion, release, etc.

37. The regulations at 40 C.F.R. Part 265 Subpart D and KAR 28-31-4(g)(4) require that a generator of hazardous waste submit a copy of its RCRA Contingency Plan to the local fire department, police department, hospital, and State and local emergency response teams.

38. At the time of the August 13 and 14, 2002, inspection, Respondent's RCRA Contingency Plan failed to:

- a. list the names, home addresses, and telephone numbers (office and home) of all persons qualified to act as emergency coordinator and the order in which they assume responsibility to act as emergency coordinator,
- b. list emergency equipment (such as spill control equipment, communications systems, fire extinguishers, alarm systems, decontamination equipment, etc.) at the facility, where such equipment would be found at the facility, and a brief description of the capabilities of all such emergency equipment,
- c. include an evacuation plan that describes emergency meeting locations, the signals indicating different types of emergencies, and primary and secondary evacuation routes,

- d. describe where hazardous wastes are managed and the types of injuries that could result in the event of an accident or emergency,
- e. describe arrangements agreed to by the fire department, police department, hospital, and State and local emergency response teams, and
- f. describe actions facility personnel will take in response to a fire, explosion, release, etc.

39. At the time of the August 13 and 14, 2002, inspection, Respondent had failed to submit a copy of its RCRA Contingency Plan to the local fire department, police department, hospital, and State and local emergency response teams.

40. Respondent failed to comply with 40 C.F.R. Part 265 Subpart D and KAR 28-31-4(g)(4), as described above.

Failure to have complete training records

41. The regulations at 40 C.F.R. § 265.16 and KAR 28-31-4(g) require that a generator of hazardous waste keep records that identify:

- a. the job title for each position related to hazardous waste management and the name of the employee filling each such position,
- b. the skill, education, and qualifications a person must have to fill a position related to hazardous waste management and the duties assigned to each such position,
- c. the amount of both introductory and continuing training that will be given to each person filling a position related to hazardous waste management.

42. At the time of the August 13 and 14, 2002, inspection, Respondent failed to have records that identify:

- a. the job title for each position related to hazardous waste management and the name of the employee filling each such position,
- b. the skill, education, and qualifications a person must have to fill a position related to hazardous waste management and the duties assigned to each such position,
- c. the amount of both introductory and continuing training that will be given to each person filling a position related to hazardous waste management.

43. Respondent failed to comply with 40 C.F.R. § 265.16 and KAR 28-31-4(g), as described above.

Failure to have a spill control and decontamination equipment

44. The regulations at 40 CFR § 265.32(c) and KAR 28-31-4(g)(4) require that generators of hazardous waste maintain spill control equipment and decontamination equipment in the event of a spill.

45. At the time of the August 13 and 14, 2002, inspection, Respondent failed to have equipment to control a solvent, paint, or wastewater spill.

46. Respondent's failure to have equipment to control a solvent, paint, or wastewater spill is a violation of 40 CFR § 265.32(c) and KAR 28-31-4(g)(4).

CONSENT AGREEMENT

47. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement or the Final Order.

48. Respondent neither admits nor denies the factual allegations contained in this Complaint and Consent Agreement/Final Order.

49. Respondent consents to the issuance of the Final Order and consents to the payment of a mitigated civil penalty as set forth in the Final Order.

50. Respondent waives any right to contest the allegations and its right to appeal this Consent Agreement or the Final Order accompanying this Consent Agreement.

51. Respondent and Complainant each agree to bear their own costs and attorney's fees.

52. Nothing contained in this Consent Agreement or the Final Order shall alter or otherwise effect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

53. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Complaint and Consent Agreement/Final Order and to execute and legally bind Respondent to it.

54. Respondent understands that failure to complete the Compliance Actions described in the Final Order within the designated time periods may, among other things, subject Respondent to civil penalties up to \$27,500 per day of non-compliance.

55. Respondent's failure to pay the civil penalty may result in commencement of a civil action in Federal District Court to recover the unpaid portion, together with interest thereon at the applicable statutory rate.

Compliance Actions

56. Respondent shall take the following compliance actions within the time periods specified:

- a. Submit documentation (e.g. written description of on-site management practices, hazardous waste manifest, bill of lading, etc.) by May 1, 2004 demonstrating how the spent rags and paint booth sweepings generated at the facility were managed and disposed between November 1, 2003 and April 30, 2004.
- b. Submit documentation (e.g. hazardous waste storage area inspection log, etc.) by May 1, 2004 demonstrating that hazardous waste storage area inspections were conducted weekly between November 1, 2003 and April 30, 2004, as required by KAR-28-31-4(k).

57. Reporting to EPA: All documents required to be submitted to EPA to fulfill the requirements of Paragraph 56 of this Final Order shall be sent to:

Brian Mitchell
U.S. Environmental Protection Agency
Air, RCRA, and Toxics Division
901 North Fifth Street
Kansas City, Kansas 66101

Parties Bound

58. This Final Order shall apply to and be binding upon Respondent, its agents, successors, and/or assigns. Respondent shall ensure that its directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this Complaint and Consent Agreement/Final Order.

Reservation of Rights

59. EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed twenty-seven thousand five hundred

dollars (\$27,500) per day per violation, for each day of non-compliance with the terms of this Final Order, or to seek any other remedy allowed by law.

60. With respect to matters not addressed in this Consent Agreement and Final Order, EPA reserves the right to take any enforcement action pursuant to RCRA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

Termination

61. The provisions of this Complaint and Consent Agreement/Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Consent Agreement and Final Order.

FINAL ORDER

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, IT IS ORDERED that:

1. Respondent shall pay a mitigated civil penalty of Four Thousand Nine Hundred Fifty-Four Dollars (\$4,954). This mitigated amount is based on Respondent's ability to pay. The mitigated amount shall be paid within thirty (30) days of the Effective Date of this Complaint/Consent Agreement/Final Order. Payment shall be by cashier's or certified check, made payable to "Treasurer, United States of America," reference the EPA Docket No. and remitted to:


EPA - Region VII
Attn.: Regional Hearing Clerk
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

2. A copy of the check shall be mailed to:

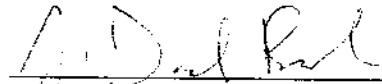
J. Daniel Breedlove
Office of Regional Counsel
U.S. Environmental Protection Agency
901 North Fifth Street
Kansas City, Kansas 66101

COMPLAINANT IN THE MATTER OF NMF AMERICA, INC.:
U.S. ENVIRONMENTAL PROTECTION AGENCY

12-24-03
Date

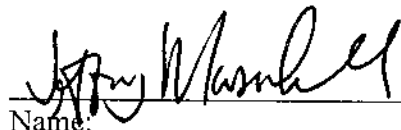

William A. Spratlin
Director
Air, RCRA, and Toxics Division
U.S. Environmental Protection Agency
Region VII

12/24/03
Date


J. Daniel Breedlove
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region VII

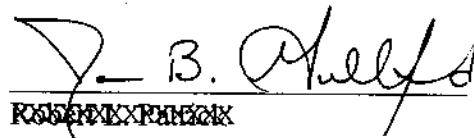
RESPONDENT:
NMF America, Inc.

12/19/03
Date


Name:
Title: **ACTING GENERAL MANAGER**

IT IS SO ORDERED. This Order is effective upon filing of a fully executed copy with EPA's Region VII, Regional Hearing Clerk..

12/31/03
Date


~~ROBERT L. FARMER~~
~~Regional Judicial Officer~~
James B. Gulliford
Regional Administrator

IN THE MATTER OF NMF America, Inc., Respondent
Docket No. RCRA-07-2004-0055

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

J. Daniel Breedlove
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Jeff Masonhall
NMF America, Inc.
9313 East 39th Street North
Wichita, Kansas 67221

Dated: 1/6/04



Kathy Robinson
Regional Hearing Clerk